REMARKS

Response To Double Patenting Rejection

Claims 1-7 and 7-13 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5, 10 and 18-20 of copending Application No 10/862,759. Specifically, the Office states:

> Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are extensively read on or over each other as broadly disclosed, taught, explained and suggested in the specifications. The functional embodiments of the materials in the claims are inherent for the same or about the same materials. Please see at least figures 2-5, paragraphs 0025, 0028, 0029, 0031. The functional properties of the materials are reasonably considered to be inherent since the same composition would provide the same property in the absence of an evidence to the contrary. For the properties of the materials, the court allows to request and require applicants to provide convincing evidence to the contrary in accordance with the authority stated In re Schreiber, 44 USPQ2d 1429.
>
> This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

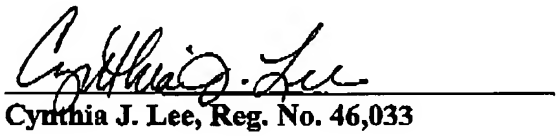
Office Action at 2-3. Applicants respectfully traverse.

Nevertheless, to advance prosecution and facilitate early allowance of the claims, Applicants submit herewith a terminal disclaimer pursuant to 37 C.F.R. §1.321(c). Applicants have submitted the terminal disclaimer solely to advance prosecution of the application, without conceding that the double patenting rejection is properly based. In filing the terminal disclaimer, Applicants rely upon the rulings of the Federal Circuit that the filing of such a terminal disclaimer does not act as an admission, acquiescence or estoppel on the merits of the obviousness issue. *See, e.g., Quad Environmental Tech v. Union Sanitary Dist.*, 946 F.2d 870, 874-875 (Fed. Cir. 1991); and *Ortho Pharmaceutical Corp. v. Smith*, 959 F.2d 936, 941-942 (Fed. Cir. 1992).

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-7 and 11-13 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephone conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,



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